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Attorney for Plaintiff  
 Alexey STEPANOV

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DISTRICT**

**Alexey Stepanov,**

**Plaintiff,**

**vs.**

**Michael Chertoff, Secretary, Department of  
 Homeland Security; Emilio T. Gonzalez,  
 Director, United States Citizenship and  
 Immigration Services; Peter Keisler, Acting  
 Attorney General; F. Gerard Heinauer,  
 Director, Nebraska Service Center, United  
 States Citizenship and Immigration  
 Services; Robert S. Mueller, III, Director,  
 Federal Bureau of Investigation  
 Defendants.**

**Case No.: C 07-02492 RS**

**[PROPOSED] ORDER GRANTING  
 PLAINTIFF'S MOTION FOR SUMMARY  
 JUDGMENT**

The motion of Plaintiff Alexey Stepanov for summary judgment came on regularly for hearing before this Court October 24, 2007. Plaintiff filed a complaint for a writ of mandamus based on Defendants' delay in adjudicating his application for adjustment to lawful permanent residency. The application has been pending for over two years and is based on an approved I-140 immigrant worker petition. See 8 U.S.C. § 1255(a).

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2 Mandamus is an extraordinary remedy and is available to compel a federal official to  
3 perform a duty only if (1) the individual's claim is clear and certain; (2) the official's duty is  
4 non-discretionary, ministerial, and so plainly prescribed as to be free from doubt, and (3) no  
5 other adequate remedy is available. *Patel v. Reno* 134 F.3d 929, 931 (9<sup>th</sup> Cir. 1997). The Court  
6 finds that both the Immigration and Nationality Act and its implementing regulations, create a  
7 mandatory and non-discretionary duty that Defendants adjudicate the pending application for  
8 permanent residency. See 8 U.S.C. § 1255(a); 8 C.F.R. § 245.2(a)(5). The Court further finds  
9 that the Administrative Procedures Act ("APA") requires that such applications be adjudicated  
10 within a "reasonable time." 5 U.S.C. § 555(b). The Court finds that the two year delay in  
11 adjudicating Plaintiff's application is unreasonable. See e.g. *Gelfer v. Chertoff* 2007 WL 902382  
12 (N.D. Cal. March 22, 2007) at \*2; *Yu v. Brown* 36 F. Supp. 2d 922, 928-32 (D.N.M. 1999).

13 After considering the motion for summary judgment, the parties' response, the arguments  
14 of counsel, and all other matters presented to the Court, IT IS HEREBY ORDERED THAT  
15 Plaintiff's Motion for summary judgment be and hereby is GRANTED. The Court shall retain  
16 jurisdiction over this matter and orders that Plaintiff's application be adjudicated within thirty  
17 (30) days of an immigrant visa number becoming available to him.

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19  
20 Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Magistrate Judge  
Richard Seeborg